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9
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 11 AMERIPRISE FINANCIAL, INC. and
 12 AMERIPRISE FINANCIAL SERVICES, INC.

13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 JOSE NETO,

17 Plaintiff,

v.

18 AMERIPRISE FINANCIAL, INC., A
 19 CORPORATION; AMERIPRISE
 20 FINANCIAL SERVICES, INC., A
 21 CORPORATION; AUGUSTINE CHOI, AN
 22 INDIVIDUAL; AND DOES 1-100,
 23 INCLUSIVE,

24 Defendants.

25) CASE NO. **CV09-9309 RSWL(FFMX)**

26) **DEFENDANTS AMERIPRISE**
 27) **FINANCIAL, INC., AMERIPRISE**
 28) **FINANCIAL SERVICES, INC. AND**
 29) **AUGUSTINE CHOI'S NOTICE OF**
 30) **REMOVAL PURSUANT TO 28 U.S.C.**
 31) **SECTIONS 1332 AND 1441(B)**

32) **(DIVERSITY JURISDICTION)**

33 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

34 PLEASE TAKE NOTICE THAT Defendants Ameriprise Financial, Inc. ("AFI"),
 35 Ameriprise Financial Services, Inc. ("AFSI") and Augustine Choi hereby remove to the United
 36 States District Court for the Central District of California the state court action described below.

37 1. On August 6, 2009, a civil action was commenced by Plaintiff Jose Neto in the
 38 Superior Court of the State of California, for the County of Los Angeles, entitled Neto v.
 39 Ameriprise Financial, Inc.; Ameriprise Financial Services, Inc.; Augustine Choi; and Does 1-
 40 100, inclusive, case no. BC419383 (hereafter, the "State Court Action"). *See* Complaint for
 41 Damages (the "Complaint") attached as Exhibit A to the Declaration of Thomas F. Berndt
 42 ("Berndt Decl."). All named Defendants in the State Court Action have joined in, and consented
 43 to the removal of the State Court Action to the Central District of California.

44 Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and Augustine Choi's Notice of
 45 Removal Pursuant to 28 U.S.C. Sections 1332 and 1441(B)

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1 to, this removal of the State Court Action.

2 2. The Complaint, filed on August 6, 2009, inaccurately stated that Plaintiff was a
 3 California resident at the time it was filed. *See* Complaint at ¶¶ 2, 3. The Complaint alleged “all
 4 parties reside or conduct business in Los Angeles County, California” and that “[a]t all times
 5 material herein, Plaintiff Neto began as a resident of the State of Hawaii and then became a
 6 resident of the State of California.” *Id.* Thus, from the face of the Complaint it appeared that no
 7 diversity jurisdiction existed so as to justify removal to federal court.

8 3. December 7, 2009, was the first date upon which Defendants had knowledge that,
 9 contrary to the allegations in the Complaint, Plaintiff was a resident of Hawaii at the time the
 10 Complaint was filed and at all times thereafter. *See* Berndt Decl. Exs. B, C, D. On December 7,
 11 2009, AFI and AFSI received discovery responses in which Plaintiff stated that he “relocate[d]
 12 back to Hawaii.” Plaintiff’s Response to Form Interrogatory 210.4, Berndt Decl. Ex. B. When
 13 asked to state his current and past residences, Plaintiff stated he resided in California from
 14 “March 09 to July 09” and in Hawaii from “August 09 to present.” Plaintiff’s Response to Form
 15 Interrogatory 2.5, Berndt Decl. Ex. C. This removal is timely because this notice of removal was
 16 filed and served by Defendants AFI and AFSI “within thirty days after receipt by the defendant,
 17 through service or otherwise, of a copy of an amended pleading, motion, order **or other paper**
 18 from which it may first be ascertained that the case is one which is or has become removable . . .
 19 . . .” 28 U.S.C. § 1446(b) (emphasis added).

20 4. The State Court Action is a civil action of which this United States District Court
 21 has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this
 22 District Court by Defendants pursuant to 28 U.S.C. 1441(b) in that this is a civil action between
 23 citizens of different states and the amount in controversy exceeds the sum of \$75,000.00
 24 exclusive of interest and costs.

5. Where a state court complaint is unclear as to the amount in controversy, a removing party need only show that it is “more likely than not” that the amount in controversy exceeds \$75,000. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. Cal. 2007) (quoting *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398 (9th Cir. 1996)). A removing defendant may make the requisite showing by either demonstrating that it is “facially apparent” from the complaint that the claims likely exceed \$75,000 or by setting forth facts in a notice of removal that support a finding of the requisite amount. *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (it was “facially apparent” that claim exceeded \$75,000 where plaintiff alleged property damage, travel expenses, emergency ambulance trip, six-day stay in the hospital, pain and suffering, humiliation, and temporary inability to do housework); *see also White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (it was facially apparent plaintiff’s wrongful termination claim exceeded \$75,000 based on her “lengthy list of compensatory and punitive damages” including loss of pay, fringe benefits, impaired earning capacity, harm to credit, emotional distress, and attorney fees). Here, although Plaintiff does not specifically allege the amount in controversy, the Complaint along with Plaintiff’s discovery responses demonstrate that it is more likely than not that the amount in controversy exceeds \$75,000.

A. Plaintiff seeks damages for the following items:

1) Lost income – Plaintiff seeks both past and future income loss resulting from his termination. *See Plaintiff's Response to Form Interrogatory No. 210.2, Berndt Decl. Ex. B.* Plaintiff alleges he would have earned \$33,000 annually from Defendants. Complaint at ¶¶ 11, 23. Based on this information, it takes less than two-and-a-half years of Plaintiff's alleged lost income to exceed the jurisdictional threshold. Even if the Court considers only the approximately seven-and-a-half months of lost wages Plaintiff has allegedly suffered to date,

this alone totals \$20,625.

- 2) Compensation for alleged wage and hour violations – Plaintiff seeks compensation for alleged off-the-clock work as well as alleged unpaid overtime pay. Complaint at ¶¶ 26-28.
- 3) Lost employment benefits – Plaintiff seeks compensation for lost benefits, including health and dental insurance and enrollment in a 401(k) Plan. Complaint at ¶ 30; Plaintiff's Response to Form Interrogatory No. 210.5, Berndt Decl. Ex. B. Plaintiff also claims Defendants promised to reimburse him for the expenses of taking examinations to obtain his Series 6, Series 66, and California Life and Health licenses. Complaint at ¶ 30.
- 4) Compensation for physical, mental, and/or emotional injury – Plaintiff alleges that as a result of Defendants' alleged conduct, he "has suffered and continues to suffer severe emotional distress, in an amount to be proven at trial." Complaint at ¶ 23. Plaintiff alleges Defendants caused him to suffer: "Severe emotional distress, chest pains, high blood pressure, stress, respiratory problems, inability to sleep, stomach problems, loss of appetite, problems getting motivated, mental and emotional stress." Plaintiff's Response to Form Interrogatory No. 212.4, Berndt Decl. Ex. B.
- 5) Medical expenses - Plaintiff claims his emotional distress has caused him to make at least one doctor's visit, which involved an ultrasound procedure. Plaintiff's Response to Form Interrogatory No. 212.4, Berndt Decl. Ex. B.
- 6) Job search expenses - Plaintiff does not elaborate on what this item of damages involves. *See* Complaint at ¶ 39.
- 7) Relocation and travel costs – In alleged reliance on Defendants' alleged

1 representations, Plaintiff claims he relocated to California and sold his
 2 vehicles and furniture. Complaint at ¶ 12. It appears Plaintiff also seeks
 3 expenses associated with moving back to Hawaii after his alleged wrongful
 4 termination by Defendants. *See Plaintiff's Response to Form Interrogatory*
 5 9.2, Berndt Decl. Ex. C. Thus far, Plaintiff has produced receipts
 6 documenting \$1,414.88 in airline expenses incurred in traveling between
 7 Hawaii and California. Berndt Decl. Ex. E. This appears to be only a portion
 8 of this alleged item of damages.

10 8) Living costs – Plaintiff apparently seeks costs associated with “secur[ing] a
 11 residence in Los Angeles, California.” Complaint at ¶12. Plaintiff also seeks
 12 costs associated with living in Los Angeles for approximately three months
 13 after he was terminated. *See Plaintiff's Response to Form Interrogatories 2.5,*
 14 9.2, Berndt Decl. Ex. C. Even if one estimates the cost of living in Los
 15 Angeles at \$1,000 per month, this would amount to \$3,000 in damages.
 16
 17 9) Attorneys' fees – “[A]ttorneys' fees can be taken into account in determining
 18 the amount in controversy if a statute authorizes fees to a successful litigant.”
 19 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998). Here,
 20 Plaintiff alleges a claim under California Labor Code 2699, which authorizes
 21 attorneys' fees to a successful litigant. § 2699(g)(1). Thus, Plaintiff's
 22 attorneys' fees are included when calculating the amount in controversy.
 23 Thus far, Plaintiff's attorneys have presumably conducted some investigation
 24 of Plaintiff's claims; drafted, served, and filed a complaint; drafted and served
 25 discovery; drafted and served discovery responses; collected and produced
 26 documents; and served a notice of deposition. *See* Berndt Decl. Exs. A-G.
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1 Even if one estimates that Plaintiff's attorneys have spent a total of fifty hours
2 on this case to date and charge only \$300 per hour, Plaintiff's claim for
3 attorneys' fees to date amounts to \$15,000.

4 10) Punitive damages – “It is well established that punitive damages are part of
5 the amount in controversy in a civil action.” *Gibson v. Chrysler Corp.*, 261
6 F.3d 927, 945 (9th Cir. 2001). Here, Plaintiff seeks punitive damages against
7 all three Defendants under three separate sections of the California Civil Code
8 and the California Labor Code:

9 a) As his third cause of action, Plaintiff alleges Defendants made
10 misrepresentations in violation of California Labor Code § 970. Section
11 972 provides that “any person . . . who violates any provision of Section
12 970 is liable to the party aggrieved, in a civil action, for **double damages**
13 resulting from such misrepresentations.” (emphasis added). Under his §
14 970 claim, Plaintiff apparently seeks compensation for all damages listed
15 above. *See* Complaint at ¶¶ 31-33. Because § 970 contains a double-
16 damages provision, the jurisdictional amount is exceeded if this Court
17 finds that Plaintiff's other damages exceed \$37,500.

18 b) As a separate item of punitive damages, Plaintiff seeks 30 days of
19 Plaintiff's former wages under Labor Code §§ 201-203, 2699. This
20 amounts to approximately \$2,730.

21 c) Finally, Plaintiff seeks punitive damages against all three Defendants
22 under California Civil Code § 3294. There is no explicit limit to the
23 amount of punitive damages that can be awarded under this section. *See*
24 *id.*

B. Based on Plaintiff's lengthy list of compensatory and punitive damages, it is more likely than not that the amount in controversy exceeds \$75,000. For example, Plaintiff's alleged lost wages to date (\$20,625), plus travel costs (\$1414.88), plus living costs (\$3,000), plus attorneys' fees to date (\$15,000), plus the \$2730 penalty under labor Code sections 201-203, 2699 equals \$42,769.88. Doubling this \$42,769.88 amount, under § 970's double damages provision, equals \$85,539.76. Thus, even if the Court only considers Plaintiff's lost wages to date, travel costs, living costs, the statutory penalty alleged, and attorneys' fees to date, the amount in controversy exceeds \$75,000.

6. From the date of filing of the State Court Action to the present, and during all relevant times herein, Plaintiff Jose Neto, on the one hand, and Defendants Augustine Choi, AFI, and AFSI on the other hand, were and are citizens of different states, as follows:

A. Individual Plaintiff Jose Neto, from the date of filing of the State Court Action to the present, and during all relevant times herein, is and has been a citizen and resident of Hawaii.

B. Individual Defendant Augustine Choi, from the date of filing of the State Court Action to the present, and during all relevant times herein, is and has been a citizen and resident of California. Complaint at ¶ 5

C. Defendants AFI and AFSI are each incorporated in Delaware and the principal place of business of each is Minnesota. Declaration of Thomas R. Moore (“Moore Decl.”) at ¶ 2. Because neither AFI nor AFSI are citizens of Hawaii, complete diversity exists under 28 U.S.C. § 1332.

1) For the purposes of diversity jurisdiction, a corporation is a citizen of any state where it is incorporated and of the state where it has its principal place of

1 business. *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir.
 2 1990) (citing 28 U.S.C. § 1332(c)). Federal courts generally use one of two
 3 tests for locating a corporation's principal place of business. *Id.* Under the
 4 "place of operations test," the principal place of business is the state which
 5 contains a substantial predominance of corporate operations. *Id.* Under the
 6 "nerve center test," a corporation's principal place of business is where its
 7 executive and administrative functions are performed. *Id.*

8 a) Place of Operations Test - The relevant factors to determining the location
 9 of a majority of corporate activity include: (1) determining the location of
 10 the majority of the corporation's (a) employees, (b) tangible property, and
 11 (c) production activities; and (2) ascertaining where most of the
 12 corporation's (a) income is earned, (b) purchases are made, and (c) sales
 13 take place. *Id.* at 1094. Under these factors, neither AFI's nor AFSI's
 14 principal place of business is Hawaii. For example, Hawaii does not
 15 contain a majority of AFI or AFSI's employees, tangible property, or
 16 production activities.¹ Moore Decl. ¶ 3. Additionally, Hawaii is not the
 17 state where either AFI or AFSI earn most of their income² or make most
 18 of their sales or purchases.³ *Id.* at ¶ 4. Thus, Hawaii is neither AFI nor

22
 23 ¹ AFI and AFSI operate from the Ameriprise Financial Center in Minneapolis, Minnesota, an
 24 897,280 square foot building leased by AFI, and the 903,722 square foot Client Service
 25 Center, owned by AFI. Moore Decl. at ¶ 6. AFI also owns a 170,815 square foot training
 26 facility and conference center located in Chaska, Minnesota, and leases space for two
 27 operations centers—one in Minneapolis and another in Phoenix, Arizona. *Id.*

28 ² For the purposes of discussing where the majority of a company's "income" or "sales" arise,
 29 its gross receipts are probably the best point of comparison because they measure what a
 30 company "earns" or receives from each state. For AFSI, Minnesota has the highest number
 31 of gross receipts of any state. *Id.* at ¶ 7.

³ The best way to show where a company makes most of its "purchases," is probably to gauge
 32 the amounts in sales and use tax the company reported for each state. Seventy-five percent
 33 of AFI's (and its subsidiaries, which includes AFSI) 2007 Sales & Use Tax is allocated to

1 AFSI's principal place of business under the place of operations test.

2 b) Nerve Center Test – Both AFI and AFSI's official corporate address and
3 executive offices are located in Minneapolis, Minnesota. *Id.* at ¶ 5. Thus,
4 Minnesota is both AFI and AFSI's principal place of business under the
5 nerve center test. *See Fidelity & Guaranty Life Ins. Co. v. Albertson*, 2007
6 WL 1971939, * 3 (S.D. Cal. Jun. 20, 2007) (finding nerve center to be
7 state where corporate headquarters and administrative and executive
8 functions took place).

9
10 7. Therefore, complete diversity exists between the Plaintiff and the Defendants and,
11 thus, diversity jurisdiction is proper before this District Court.

12
13 DATED: December 18, 2009

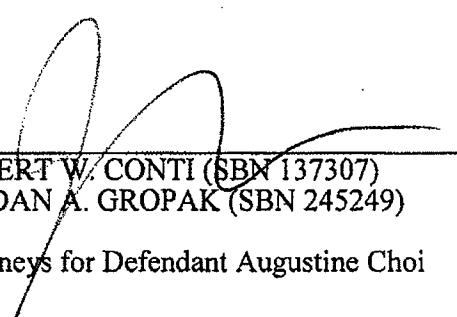
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20 Dated: December 19, 2009

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26
27
28 Minnesota, a clear majority. *Id.* at ¶ 8.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 38 Technology Drive, Suite 100, Irvine, California 92618-2301. On December 18, 2009, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: DEFENDANTS AMERIPRISE FINANCIAL INC.,
AMERIPRISE FINANCIAL SERVICES, INC. AND
AUGUSTINE CHOI'S NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. SECTIONS 1332 AND
1441(B)

SERVED UPON: SEE ATTACHED SERVICE LIST

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Irvine, California. I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY FEDERAL EXPRESS) I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

(BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(i), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on December 18, 2009, at Irvine, California.



Karen Satterfield

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